January 8, 1954
Opinion No. 54-2

TO: The Honorable Harry S. Ruppelius
House of Representatives
1505 North Fifteenth Avenue
Phoenix, Arizona

RE: Small loan licensees' security; interest rates.

QUESTIONS: (1) May the holder of a small loan license lend money by virtue of his small loan license and take chattels of other personal property as security for said loan, i. e. can he take generally as security for a loan?
(2) May a merchant, for example a garage owner, charge more than the legal rate of interest in the nature of a carrying charge for work done where payments therefor are deferred over several months or, in other words, may the merchant charge the rate of interest allowed to be charged for a small loan licensee?

In answer to your first question there appears to be no provision prohibiting a small loan licensee from taking personal property as security for a loan, apart from the restrictions combined in Sections 51-822 and 51-823, A.C.A. 1939. Section 51-822, supra, provides:

> "51-822. Husband and wife must sign chattel mortgage--Exception--Essential articles not to be mortgaged.--No licensee shall take a chattel mortgage, or other encumbrance on household furniture, then in use and possession of the borrower, if married, unless his spouse be a party to such conveyance, or assent thereto in writing indorsed or annexed thereto; if the borrower and his spouse have lived separate and apart for at least five (5) months prior thereto, such spouse need not join therein or

> join a borrower in the assent thereto. No chattel mortgage, or other encumbrance, shall be taken upon kitchen utensils, chinaware, glassware, cutlery, food, bedclothes, bedding, curtains, clothing and other family wearing apparel in the use and possession of the borrower, or member of his family."

Section 51-823, supra, provides:

> "51-823. Sale under chattel mortgage.--Should a chattel mortgage taken by the licensee be in default, if it contains power of sale, such sale may be made upon such notice and terms as therein agreed, without foreclosure proceedings. A report of such sale shall be filed with the licensing official, within fifteen (15) days thereafter, and a copy kept by the licensee, for one (1) year thereafter for inspection by any person interested."

It is to be noted that various statutes in the Small Loan Act apparently anticipated that deposits of security would be given in connection with loans made by a licensee. For example, Section 51-820, A.C.A. 1939, sets forth the manner of making a loan and payment and satisfaction thereof. This section provides, in part:

> "51-820. Manner of making loan--Payment --Satisfaction.--Every licensed money-lender shall state in every evidence of indebtedness, the date of its execution, the amount of money actually lent, the charges to be paid for compensation, expenses and losses and the dates and amounts of repayment agreed upon, and deliver to the borrower, at the time a loan is made, a pass book, or card stating in clear terms the date, amount and compensation for interest, fees, expenses and losses for the loan and dates and amounts of repayment agreed upon, the nature of the security given, also the names and addresses of both borrower and licensed money-lender. * * * * * " (Emphasis supplied.)

Thus it is apparent that the Legislature was cognizant of the fact that a security could be given and therefore included the requirement that the passbook or card show the nature of the security given.

However, under the circumstances described by your question, the small loan licensee might be considered to be acting as a pawnbroker in which case he would be subject to the restrictions of Sections 43-4101 through 43-4106, A.C.A. 1939, wherein the business of a pawnbrokerage is regulated.

With reference to your second inquiry, the laws of the State of Arizona have provided that the maximum rate of interest which may legally be charged for any indebtedness is six percent per annum unless a different rate (up to eight percent per annum) is contracted for in writing, with the exception of money loaned under the Small Loan Act. Section 36-101, A.C.A. 1939, provides as follows:

> "36-101. Legal rate of interest.--The interest for any legal indebtedness shall be at the rate of six dollars ($6.00) upon one hundred dollars ($100) for a year, unless a different rate is contracted for in writing. A rate of interest, not to exceed eight (8) per cent per annum, if agreed to in writing, signed by the debtor, shall be paid; a judgment rendered on such agreement shall bear the rate of interest provided for in the agreement, and it shall be so specified in the judgment."

In addition, Section 36-102, A.C.A. 1939, makes the following provision:

> "36-102. Usury prohibited.--Penalty.--No person shall directly or indirectly take or receive in money, goods, or things in action, or in any other way, any greater sum or any greater value for the loan or forbearance of any money, goods, or things in action, than eight dollars ($8.00) on one hundred dollars ($100) for one (1) year; any person, contracting for, reserving or receiving, directly or indirectly, any greater sum or value, shall forfeit all interest."

Lastly, Section 36-103, A.C.A. 1939, provides:

> "36-103. Payment of usurious interest to apply on principal.--Where a greater rate of interest than eight (8) per cent per annum has been contracted for, reserved, or received, directly or indirectly, all payments of money or property made on account of such interest, or as inducements to contract for more than eight (8) per

> cent per annum, whether made in advance or not, shall be deemed and taken to be payments made on account of the principal, and in an action brought to recover the amount of the obligation the court shall render judgment for no greater sum than the balance found due upon the principal, without interest, after deducting such payments."

The language contained in the above-quoted statutory sections is clear and unambiguous. Therefore, the opinion of the Department of Law is that in the absence of a written contract to the contrary any legal indebtedness carries interest at the rate of six percent (6%) per annum; the maximum amount that may be charged under a contract in writing is eight percent (8%) per annum. Thus carrying charges imposed by a merchant would necessarily be limited to the interest rates prescribed by Section 36-101, supra. Such a merchant could not charge the rate of interest allowed to be charged by a small loan licensee, as a carrying charge for work done.

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